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No.

In the

Supreme Court of the United States

OCTOBER TERM, 1983

BETTY SANDER HARVEY

Petitioner

vs.

STEPHEN P. CARPONELLI and
CARPONELLI, MASSUCCI & KRUG

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST DISTRICT

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QUESTIONS PRESENTED FOR REVIEW

I

Can The State Of Illinois Pass A Law Which Abridges United States Citizens Right To Due Process Secured By U.S.C.A. Amendment Fourteen?

Can The Illinois Courts Uphold Such A Law With Impunity, When Such Courts Are Mandated To Support The Constitution Of The United States?

Was Petitioner Deprived Of A Fair And Impartial Hearing Secured By The Due Process Clause Of U.S.C.A. Amendment Fourteen?

Can The Appellate Court Objectively Review An Order Of The Trial Court Which Breached Petitioner's Right To Due Process Secured By Amendment 14 When Appellate Court Issued An Order Breaching Petitioner's Constitutional Rights In An Identical Manner?

Can The Illinois Courts Pick And Choose Which State And Federal Laws They Will Uphold?

II

Was There Any Evidence To Support The Orders Entered By The Trial Court Declaring Mistrial And Granting Fees And Costs To Defendants?

Was There Any Basis In Law For The Appellate Court To Affirm The Orders Entered By The Trial Court Granting Fees And Costs To Defendants?

Were The Entire Proceedings Devoid Of Due Process Secured By U.S.C.A. Amendment 14?

Have Petitioner's Rights To Certiorari In This Honorable Court Been Compromised By The Opinion Of The Appellate Court Which Opinion Is Replete With Half-truths, Misrepresentations And Falsification Of Facts Designed To Discredit Petitioner?

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AUTHORITIES CITED

Cases

Allstate Ins. Co. v. *Hogue* 101 S. Ct. 633 (1981) 21

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Goldberg v. *Kelly* 90 S. Ct. 1011, 1021 (1970) 21

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Pavis v. *Jewel Tea Co.* 53 Ill. App. 3d 287, 289 (1977) 10

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United States v. *Scuito* 531 F2nd 842, 845 (1976) 13

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Petitioner, Betty Sander Harvey, respectfully prays that Writ of Certiorari be issued in the above entitled cause, to review the opinion and judgment of the Appellate Court of Illinois, First District, affirming the award of fees and costs to defendants, orders entered by both the trial and appellate courts denying Petitioner's Motions for Change of Venue and the order entered by the Illinois Supreme Court denying Petition for Appeal as Matter of Right.

JUDGMENT AND OPINION BELOW

On August 14, 1981 the trial court denied petitioner's Motion for Change of Venue (Appendix A.) On May 3, 1982 the Illinois Appellate court denied Petitioner's Motion for Change of Venue or Disqualification of the Justices (Appendix B.) On August 22, 1983 the Appellate court of Illinois, First District entered its Opinion reversing contempt citation fine against plaintiff and affirming the fees and costs award to defendants on mistrial, No. 82-382. A copy of the Appellate Opinion is attached hereto as Appendix C. Timely Petition for Leave to Appeal to the Illinois Supreme Court No. 59102 was denied on December 6, 1983 (Appendix D.

JURISDICTION OF THIS COURT

The judgment sought to be reviewed (the Illinois Supreme Court's denial of the Petition to Appeal as matter of Right) was entered on December 6, 1983. The Petition for Writ of Certiorari is filed within 90 days from said denial. Jurisdiction of this court is invoked under title 28 U.S. Code 2106 and 28 U.S. Code Sec. 1257 (3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state shall make or endorse a law which shall abridge the privileges or immunities of citizens of the United States: nor shall any state deprive any person of life, liberty, or property without due process of law: nor deny to any person within its jurisdiction, the equal protection of the laws.

Illinois Revised Statutes Ch. 110 Sec. 146 par. 1 provides in pertinent part:

> A change of venue in any civil action may be had . . . where any party. . . fears that he will not receive a fair trial in the court in which action is pending because the judge is prejudiced against him.

Illinois Revised Statute Ch. 110 Sec. 508 provides in pertinent part:

> No party shall have more than one change of Venue.

RAISING THE FEDERAL QUESTION

In Trial Court, Petitioner filed Motion for Change of Venue* with Affidavit, supporting exhibits and Notice setting forth the prejudice of Judge Paul Elward and her fear that she would not receive a fair and impartial hearing before him. Elward denied Motion. Petitioner raised question of Elward's denial and the Illinois Statute he invoked being contrary to the Constitution of the United States, U.S.C.A. Amendment 14, in her argument on Petition for Fees and costs. Page 37 of transcript of such hearing which took place Jan. 4, 1982 attached as Appendix J.

In Appellate Court Petitioner filed Motion for Change of Venue or Disqualification of the justice with supporting 7 pg. affidavit setting forth her fear that she could not have a fair hearing and review of her cause if it were heard before Justices Goldberg, McGloon and Campbell be-

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* In re Murchison (1955) 75 S.Ct. 623, 625 a fair trial in a fair tribunal is basic requirement of due process. It necessarily follows that motions for change of venue to escape a biased tribunal raise Constitutional issues both relevant and essential.

cause said justices are each prejudiced against her. Justices entered an order May 3, 1982 (Appendix B) denying such petition.

In Petitioner's Brief and reply brief filed in the Appellate Court she raised the question of the Trial Court's breach of her Civil Rights under U.S.C.A. Amendment 14.

In her Brief for leave to Appeal as Matter of Right to Illinois Supreme Court she raised the issue of the failure of both the Trial and Appellate Court to provide her with a fair and impartial tribunal before which to bring her cause of action by failure to grant her Motion for change of Venue,* thereby breaching her Rights to Due Process under U.S.C.A. Amendment 14.

STATEMENT OF THE CASE

Petitioner Harvey filed suit 77L 10953 *Harvey* v. *Carponelli* et al, alleging legal malpractice, pro se. It was assigned to Judge Foreman (Foreman). Having previously appeared before Foreman, Petitioner had reason to believe she would not receive a fair hearing, and filed Motion for Change of Venue. The case was assigned to Judge Paul Elward (Elward).

Petitioner had previously appeared before Elward in four closely allied lawsuits. In each instance he exhibited flagrant hostility toward her in actions, attitude and words and aggressively demonstrated his prejudice against her and his favor towards her adversaries. She

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* In re Murchison (1955) 75 S.Ct. 623, 625 A fair trial in a fair tribunal is basic requirement of due process. It necessarily follows that motions for change of venue to escape a biased tribunal raise Constitutional issues both relevant and essential.

filed Motion for Change of Venue instanter with notice, affidavit and exhibits. Elward entered order denying such Motion August 14, 1982 (Appendix A.) and at once began demonstrating his boundless prejudice against her.

The ultimate prejudice came when petitioner as her own counsel and witness was told by the Court to break up a question on evidence.

Seeking guidance from the court on which facts or documents he wanted her to present in evidence first, she began to inquire: "Are we interested in facts, your Honor, or . . . ." at which point the Court interrupted her and on the basis of this innocent, incomplete question which defendants distorted, declared a mistrial, stating petitioner had prejudiced the jury.

Petitioner filed Motion to obtain names and addresses of jurors to poll them, but the Court sua sponte entered an order October 18, 1981 barring parties from securing names/addresses of jurors or questioning them (Appendix E). Petitioner then filed Appeal # 81-2933 which was dismissed by the Appellate Court on February 1, 1982. Defendants filed Motion for Fees and Costs because of the Mistrial and on January 7, 1982 the court entered an order (Appendix F) read into record January 4, 1982 awarding fees and costs in the sum of $2,108.50 and a second order fining Petitioner $2,109.50 for contempt of court less whatever amount she paid for fees and Costs. On January 20, 1982 the court entered an order requiring payment by March 20, 1982. On February 8, 1982 the court entered order denying Motion to Vacate such orders.

Petitioner filed Appeals on the above orders which were consolidated and assigned to Justice Mayer Gold-

berg, Thomas McGloon and Calvin Campbell. Petitioner filed Motion for Disqualification of Justices or Change of Venue supported with Affidavit of Prejudice and Exhibits setting forth the prejudice of such justices and her fear that she could not obtain a fair hearing before them. On May 3, 1982 said justices entered order denying such Motion. (Appendix B) On June 13, 1982 Petitioner filed Motion to Transfer case to the Federal Court which the court denied.

On August 22, 1983 the justices entered their opinion (Appendix G) reversing the contempt fine order, and affirming the fees and costs award order. Petitioner filed Appeal as Matter of Right to Illinois Supreme Court alleging breach of her Constitutional Rights under U.S.C.A. Amendment 14. On December 6, 1983 such court denied her Appeal. (Appendix D.) Petitioner filed Motion for Stay of Execution of Judgment pending Appeal to this Court which the Illinois Supreme Court granted (Appendix L).

PREFATORY STATEMENT

In its 11 page opinion the Appellate Court has failed to address all the Constitutional issues raised in Petitioner's Appeal, stating issues not raised in the trial court cannot be reviewed.

What convoluted logic is this? Petitioner filed Motion for Change of Venue (Appendix A) [which in itself raises Constitutional issues (In re Murchison)] and argued the matter on January 4, 1982 (Appendix J)

It is historically settled when breach of Constitutional Rights results from Judgment of the Trial court, such matters are properly raised on Appeal. (*People* v. *Stoyan*

280 Ill. 300. Instead of reviewing the trial court's declaration of mistrial and order awarding fees and costs to defendants, it appears the Appellate Court has rubberstamped it, repeating the nebulous generalizations and falsifications set forth by the Trial Court, as follows:

P.9a "We find ample evidence in record below to support charges" . . . . but the Court does not specify a single example of evidence.

P.9a "The trial judge correctly held plaintiff deliberately disobeyed court's warning not to question jury about insurance,".... but there is in the record no order, memorandum, Report of Proceeding, or any other document which records the judge giving such warning, nor is there any evidence to support the characterization of "deliberate disobedience".

P.8a "Plaintiff's conduct exhibits a callous and cynical disregard of accepted norms" . . . but fails to give a single example of her callousness and cynical disregard.

The issue raised on appeal: that there was no basis for declaration of a mistrial, no evidence to support same, no basis for awarding fees and costs . . . was ignored by the Appellate court who chose to say "only issue remaining is courts awarding fees and costs." Is it possible the court can address the fees and costs award without addressing whether the Mistrial, on which they were predicated, was supported by evidence?

As set forth in Petitioner's brief, there was no evidence whatsoever to justify declaration of a mistrial. It was based solely on the court and defendants' distortation, interpretation, and extrapolation of an incomplete sentence of Petitioner which was interrupted by the judge himself, altering its meaning and intent.

The Appellate court never determined whether there was any evidence to support the Mistrial. It merely affirmed the fees awarded, due to it.

If ever a reviewing court's decision violated the salutary principles of *Gregory* v. *City of Chicago* this one does:

Mistrial was declared because petitioner was accused of saying:	The record shows petitioner's only words were:
"Judge, Aren't we interested in the facts and the truth." (App. I) "Are we not interested in the facts" (App. M) "Are we interested in the facts, your honor," (Appellate Opinion p.9)	"Are we interested in facts, your honor, or . . . . (App. H)
The court insists it was a completed sentence." Nobody interrupted you." App. M)	The record shows the judge interrupted Petitioner Harvey (App. H)
The court declared Mistrial accusing Petitioner of prejudicing jury (App. I)	The record indicates the jury had formed no opinion. (App. L)
The court sua sponte entered an order barring all parties from seeking names/addresses of jurors or questioning them, in response to petitioner's Motion. (Appendix E)	Petitioner filed Motion for names/addresses to poll jury in order to determine whether they had been prejudiced.

Petitioner was accused of Callousness, deliberate disobedience, Contemptuous conduct, inflammatory statements and other generalized infractions (Appellate opinion) (App. I)	The record will show no specific accusations nor any evidence to support same.

Clearly there was no evidence on which mistrial could be justified. And if ever a proceeding flew in the face of U.S.C.A. Amendment 14 Due Process clause, it is this one.

Petitioner	The Court
Petitioner filed Motion for Change of Venue from Judge Elward in the Trial court with due Notice, supporting Affidavit of prejudice with exhibits.	Judge Elward denied Motion for Change of Venue. (App. A).
Petitioner filed Motion for Change of Venue in the Appellate Court from Justices Goldberg, McGloon and Campbell complete with 7 page Affidavit of prejudice and exhibits and due notice.	The Appellate Court denied Motion for Change of Venue. (App. B).
Petitioner filed Motion for Transfer to Federal Court.	The Appellate Court denied same.

Petitioner could not escape from the prejudiced Court. Judge Elward frequently refuses to grant change of

Venue as evidenced in *Frede* v. *McDaniels*, 37 Ill. App. 3d 1053 (1976) and *Palvis* v. *Jewel Tea Co.*, 53 Ill. App. 3d 287 (1977). When appealed, the court reversed all orders made after the improper denial and remanded such cases for trial as the Illinois Law requires.

On appeal, petitioner had the misfortune of having her case assigned to the same justices who upheld dismissal of her cause of Action in *Harvey* v. *Harris*, (1979) 73 Ill. App. 3d 280, setting forth more than 20 falsifications of material fact to do so.*

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* Appellate court, in instant case, again set forth numerous falsifications of material fact prejudicing petioner's right to certiorari. To wit: p.7a of Opinion states:

> Plaintiff's contention that "no written order was entered by this court finding her in contempt" is misleading in as much as copy of order is included in her brief.

It is the Court who misleads: Plaintiff's contention was that there is no order finding her in contempt for *saying the word insurance* or giving any reason. as clearly argued in her reply brief p.1 attached as exhibit K. The second deceit of the court is that the attached order found her in contempt. Again, the court falsifies the facts: the attached order was the order entered by the trial court *FINING* petitioner $2,-109.50 for contempt, not *FINDING* her in contempt. The Appellate Court's representation in opinion p.7a par. 2 that they had no jurisdiction over the question of the breach of Petitioner's constitutional rights by the Trial Court's denial of change of venue because Petition did not mention it in her Notice of Appeal, is without merit. Motion for Change of Venue in Illinois is not a final appealable order. It is therefore properly raised in conjunction with an order which is final and appealable.

Appellate court denied motion for change of venue as well as motion to transfer to Federal court, then upheld the trial court's orders which are totally devoid of evidentiary support and tacitly approved the trial court's breach of Petitioner's due process by denying change of venue. The question is: Could the appellate court unbiasedly review, when they had breached Petitioner's due process in the identical manner?

REASON FOR GRANTING WRIT

I.

PETITIONER WAS DEPRIVED OF DUE PROCESS SECURED UNDER U.S.C.A. AMENDMENT 14, BY THE TRIAL COURT'S REFUSAL TO GRANT CHANGE OF VENUE BASED ON AN UNCONSTITUTIONAL LAW, AND THE APPELLATE COURT'S REFUSAL TO GRANT CHANGE OF VENUE, BY DISREGARDING PROVISIONS OF THE U.S. CONSTITUTION AND DECISIONS OF THIS HONORABLE COURT.

United States Constitution Amendment 14 provides in pertinent part:

> No state shall make or endorse a law which shall abridge the privileges or immunities of United States citizens nor shall any state deprive any person of . . . property without due process of law.

It is well established that one of the elements of due proces is a fair and impartial tribunal before which a litigant can adjudicate his personal rights. In *Whitaker* v. *McLean* (1941) 118 Fed. 2nd 596 the Court stated:

> It has long been recognized that tribunal free from bias and prejudice is essential element of due process.

And this applies to both Criminal and Civil Cases . . . *Marshall* v. *Jerrico Inc.*, 1005 S. Ct. 1610, 1620 (1980). To insure an unbiased tribunal *Illinois Rev. Stat. Ch. 110 Sec. 146 par. 1* provides:

> A change of venue in any Civil action may be had where any party fears he will not receive fair trial in the court in which the action is pending because the judge is prejudiced against him.

Petitioner has now been in the Circuit Court of Cook County with frequent regularity since her father died January 16, 1970. She has appeared before numerous judges in four divisions of the lower Court as well as the Appellate court. Most of the judges are above reproach and deserve the greatest praise and respect. However, Petitioner has learned there are others who are not a credit to the profession, and are capable of great prejudice and injustice in the courtroom.

Petitioner was painfully aware of the prejudice of Judge Elward as it had been openly displayed in four other closely allied causes of action in which petitioner appeared before him. At such times he denigrated women in general, specifically castigated Petitioner for her pro se status, accused her of lying, suggested that she might somehow be mentally deficient, and made rulings contrary to well established principles of law. He did in fact deny her the right to see bank records on an estate in which she was sole surviving administrator, held hearing and entered orders on matters vital to Petitioner's interest when she was ill, unable to be in court had no representation and had so apprised the court. He also refused to vacate such orders. Petitioner had good cause to fear she would not obtain a fair hearing before him and at once filed Motion for change of venue which fully complied with all statutory requirements. Elward denied such Motion by order entered August 14, 1982 (Appendix A) citing Sec. 8 Ill. Rev. Stat. Ch. 110, par. 508:

No party shall have more than one change of Venue, Petitioner acknowledges she had previous change having

filed motion for same from Judge Foreman, whose behavior was as unsettlingly prejudicial as Elward's when Harvey had been before him in *Bard* v. *Harvey*.

However, the court held in *United States* v. *Scuito*, (1976) 531 F.2d 2d 842, 845:

> The right to a tribunal free from bias and prejudice is not based on the statute requiring disqualification of judge for prejudice but on the Due Process of U.S. Constitution.

U.S.C.A. Amendment 14 unconditionally provided for due process and just as clearly due process unconditionally requires a fair and impartial tribunal before which to adjudicate one's rights. *In re Murchison* (1955) 75 S.Ct. 623, 625 this honorable Court held:

> A fair trial in a fair tribunal is basic requirement of due process. It necessarily follows that motions for change of venue to escape a biased tribunal raise Constitutional issues both relevant and essential.

The Trial and Appellate Court have chosen to disregard these relevant, essential issues despite the fact that Courts are mandated to protect the Constitution . . . as set forth in *Illinois Supreme Court Rules, rule 6 (c-3) Judicial conduct, Constitutional Obligation* . . . . which states:

> It is the duty of all judges to support the *Federal* and applicable state Constitutions. They should fearlessly observe fundamental limitations and guarantees.

which principle was upheld in *Goss* v. *State of Ill.*, 312 F. Supp. 257 (1963):

> State judges as well as Federal have the responsibility to respect and protect persons from violation of their Federal Constitutional rights.

Clearly Sec. 8 Ill. Rev. Stat. ch. 110, par. 508 applied by Judge Elward is repugnant to U.S. Constitution since it abridges the rights of United States citizens to due process by blocking the only avenue to obtain a change of venue from a prejudiced court. It is in fact presumptively unconstitutional as this honorable court held in *Harris* v. *McRae* (1980) 100 S. Ct. 2671, 2685:

> If a law impinges on a fundamental right explicitly or implicitly secured by the Constitution it is presumptively unconstitutional.

citing U.S.C.A. Amend. 14, *Mobile* v. *Bolten*, 100 S. Ct. 1490, 1504 (1980). Instead of protecting persons from violation of their constitutional rights, the State of Illinois passed a law which deprives persons of their rights under U.S.C.A. Amendment 14 and the Illinois courts instead of upholding the constitution as they are obligated to do, have chosen to uphold an unconstitutional Illinois law, contemptuously disregarding decisions of this court in *Marshall* v. *Jerrico Inc.*, *Harris* v. *McRae*, *Mobile* v. *Bolten* and *Re Murchison*.

That the court was prejudiced against Petitioner is reflected throughout the transcript, culminating in the court's declaration of Mistrial, which is evidentially baseless, predicated solely on the court's extrapolation, distortion, of Petitioner's parties question which the court himself interrupted, his awarding defendants' fees and costs, and fining petitioner for contempt of court. Infra at pp. 17-21.

On Appeal of such orders, the matter was assigned to Justice Campbell, Goldberg and McGloon, the self same justices who had affirmed dismissal of Petitioner's cause in *Harvey* v. *Harris*, 76L 20780 setting forth more than 20 falsifications of material fact in their opinion. Since *Harvey* v. *Harris* is the underlying cause of action in this instant complaint, the court should have voluntarily excused themselves. Instead, they denied Petitioner's Motion for Change of Venue which was supported by Affidavit setting forth the court's falsifications in *Harvey* v. *Harris*, substantiated with exhibits.

Again, Petitioner was obliged to have her cause before a prejudiced tribunal depriving her of due process secured by U.S.C.A. Amendment 14. Contrary to the decisions in *Whitaker* v. *McLean*, *Marshall* v. *Jerrico*, *U.S.* v. *Scuito*, *In re*: *Murchison* and their mandate in Illinois Supreme Court Rules, rule 6 (c-3) Judicial Conduct, Constitutional obligations.

By applying an unconstitutional Illinois law, and disregarding Federal law, the trial court denied Petitioner Change of Venue breaching her right to due process by keeping her in a biased tribunal. By disregarding Illinois and federal law, the Appellate Court denied Change of Venue breaching Petitioner's right to due process by obliging her to have her cause reviewed by a prejudiced tribunal.

When the state courts can pick and choose which state and Federal laws they will enforce, the power and authority of this Honorable Court and the United States Constitution are substantially undermined.

Certiorari must be granted so this court can redefine and reestablish the U.S. Constitutional parameters of the state of Illinois which state passed a law that abridges the rights and privileges of U.S. Citizens de-

priving them of due process secured by U.S.C.A. 14, and which state failed to uphold valid Illinois and Federal law.

II.

THE TRIAL COURT'S ORDERS DECLARING MISTRIAL AND AWARDING FEES AND COSTS TO DEFENDANTS ARE EVIDENTIALLY BASELESS, AS IS THE APPELLATE COURT'S OPINION AFFIRMING SAME. SUCH PROCEEDINGS ARE DEVOID OF DUE PROCESS.

Defendants were most anxious to have a Mistrial declared. Twice, during voir dire they urged mistrial. On Monday, August 24, 1981, the trial which began Friday afternoon August 21, 1981, ended in Mistrial. The reason given was that Petitioner had so prejudiced jury that defendants could not have fair trial.

There is no evidence to support the declaration of mistrial. Report of Proceedings Transcript. August 24, 1981 P.64 (Appendix H) verifies the sequence of events preceding the Mistrial as follows: Petitioner was on the witness stand questioning herself about title to a certain parcel of real estate commonly known as 1053-55 W. Lake St. Chicago, IL. It was essential to establish ownership and value of such property to establish damage. The title to said property had been represented many different ways in many different legal documents, including the estate inventory and family agreement drawn to settle her father's estate. Report of Proceedings Aug. 24, 1981 Pg. 64 (Appendix H):

> Harvey: Q. Do you have any documents which reflect title to the property at 1053-55 W. Lake St. which are relevant to the representation of ownership of such property as reflected in the estate inventory and family agreement?
> Harvey: A. Yes I do.
> Chemers: (Defendants Attorney) I object . . . its many questions in one . . .
> The Court: Please break it up. Objection sustained. Lets try simple questions, if you will Mrs. Harvey.

At this point, having been repeatedly reprimanded by the court for sequence in which she presented evidence, and being unsure which documents or facts the court wished to have presented first, petitioner sought guidance from the court, inquiring:

> Harvey: Are we interested in facts, your Honor, or . . . .
> The Court: Please come back to chambers.

Once in chambers the court lambasted Petitioner about her outrageous conduct. Then Chemers shouted (Transcript, Aug. 24, 1981 p. 68, 69.) (Appendix I)

> Chemers: First motion I have is for Mistrial. I hate to do it. I feel compelled to do it. The comment plaintiff made to the court I construe so inflammatory and prejudicial . . . that the defense lawyer is trying to shut this woman up . . . to point where she had to blurt out: Judge aren't we interested in the truth and the facts."

Petitioner was astounded. Not only did chemers completely change her words, he interpreted them for his own convenience to manufacture a reason for mistrial!

Chemers added "judge" as the first word, changed "are" to the negative "aren't" substituted "the truth" for

"your honor", inserted "the" before "facts", put in a period and created a whole new sentence in place of petitioner's interrupted question. He put it in petitioner's mouth and demanded a mistrial based on it!! Petitioner protested that she was misquoted, and her question interrupted changing its meaning and intent, but Chemers *and the Court* perpetuated the deceit.

Transcript Aug. 24, 1981 p. 70 (Appendix M) shows:

> Harvey: It was a partial question. This has happened to me before, I'm interrupted before I can complete my statement.
> The Court: Nobody interrupted you then out of the clear blue sky . . you suddenly say, "are we not interested in the facts.

The Transcript (Appendix H) verifies petitioner's sentence was interrupted and by the judge himself. Even when he had the certified court transcript before him the court continued to misquote and misrepresent the facts, and declared a mistrial on his and Chemers' misrepresentation, extrapolation and speculation of petitioner's interrupted question . . . and on this basis awarded Defendants $2,108.50 in fees and costs.

The Report of Proceedings was recorded by defendants' own court reporter, and the Transcripts prepared by defendants' own court reporter. Had they had any doubts about the accuracy of such Transcripts, they would have filed corrections or raised the issues of accuracy in court. They did not. The Transcript is certified and it shows: (Transcript Aug. 24, 1981 p. 64)

> Harvey: Are we interested in facts, your honor, or . . . .

But the Mistrial was declared on defendants and the court's perversion of same.

What evidence was presented by defendants to support their claim that petitioner's words had prejudiced the jury?? The answer is "NONE". Defendants did not even file a single page of the Transcript. Was there evidence to support Petitioner's claim that the Mistrial was improperly declared and the jury not prejudiced? The answer is "YES"!

Beside the Transcript p.64 (Appendix H) which records petitioner's actual words, affirming them and the court's interruption, Petitioner filed the Transcript p. 9 from Aug 24, 1981 just after the Mistrial. The judge had gone back to court to speak with the jury and when he returned to chambers, Chemers inquired as to the reaction of the jurors. Transcript p. 9. (Appendix L):

> The Court: The jurors indicated that they had no opinion on the case since they had not even heard all the plaintiff's case.
> Chemers: Oh.
> The Court: They have, I would say in my judgment, formed no opinion about the case.

If defendants truly were persuaded that the jurors were prejudiced, they could have polled them. Petitioner was pursuaded that they were not and brought a motion under Freedom of Information Act 5 USC552 and Privacy Act 5 USC 5229 to obtain the names and addresses of the jurors. Instead, the court sua sponte entered an order prohibiting all parties from seeking names/addresses of jurors or questioning them. (Appendix E), breaching petitioner's constitutional right to due process by disregarding this Honorable Court's ruling in

Allstate Ins. Co. v. *Hogue* (1981) 101 S. Ct. 633 which stated:

> Due Process requires that there be an opportunity to present every available defense.

In *Goldberg* v. *Kelly* (1970) 90 S. Ct. 1011, 1021 this honorable Court held:

> In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross examine witnesses.

This case should be expanded to incorporate the instant case where the important decision of whether fees should be awarded defendants turned on the factual question of whether the mistrial was justified, which sequentially turned on the factual question of whether the jury had been prejudiced. The jurors witnessed petitioner's conduct and could settle the prejudice question. The trial court blocked petitioner from confronting such witnesses.

The Appellate court did not even address the issue raised in Petitioner's appeal: That there was no evidence to support declaration of Mistrial or the fees and costs award.

Instead, such court simply affirmed by *perpetuating the falsification of Petitioner's words* made by the trial court and defendants stating in its opinion p.9a.

> Plaintiff in the presence of the jury asked:
> "Mrs. Harvey: Are we interested in *the* facts your honor."

Adding "the" before facts and putting a period after "Honor." when the Transcript p.64 which was appended to Petitioner's brief affirms:

> Mrs. Harvey: Are we interested in facts, your honor, on . . . . .
> The Court: Please come back to chambers.

Even by taking Petitioner's words out of context, and altering them, there is no evidence to support the trial court's order declaring mistrial or order awarding fees and costs to defendant. Nor is there any evidence to support the Appellate Court's opinion affirming same. The entire proceedings were devoid of due process.

In *Gregory* v. *City of Chicago* (1969) 89 S. Ct. 946, 947 this court held:

> Convictions devoid of evidentiary support are violative of due process.

Further, the Appellate court has prejudiced Petitioner's right to certiorari in this honorable court by entering an opinion which is replete with half truths and misrepresentations of facts conceived to discredit Petitioner. Set forth supra at pp. 10-12.

Petitioner prays this Honorable court will invoke its supervisory powers and take such action as justice requires.

This is a 1977 case. By the same tactics displayed herein, defendants have successfully kept this cause of action from the jury for 7 years. Certiorari must be granted so these Illinois courts, trial and Appellate, will know that they can no longer make a mockery of the United States Constitution, and build a backlog of appeals for this court by manufacturing mistrials, and creating justification for same which is unsupported by evidence. This honorable court must make such Illinois courts aware

that their decisions must be based on something more substantial than conjecture, distortion extrapolation and speculation.

CONCLUSION

For all of the reasons above set forth, certiorari should be allowed: and, upon consideration of the substance of Petitioner's arguments, the orders of the Trial court entered declaring mistrial and awarding fees and costs to defendant should be reversed as repugnant to due process of law.

Respectfully submitted,

BETTY SANDER HARVEY
10 Bradford Lane
Oak Brook, IL 60521
Petitioner Pro se

APPENDIX A

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT

HARVEY

v.

CARPONELLI et al

NO. 77 L 10753

ORDER

This cause having been assigned for trial to Judge Paul F. Elward after a change of venue taken by plaintiff from Judge Lester D. Forman, plaintiff having presented to Judge Elward a petition for change of venue, notice having been given and the Court being fully advised,

It is hereby ordered that plaintiffs' petition for change of venue from Judge Elward is denied.

ENTER: Aug. 14, 1981

Judge PAUL F. ELWARD
CIRCUIT COURT

APPENDIX B

NO. 82-382
NO. 82-383

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

BETTY SANDER HARVEY, a/k/a Davis
Plaintiff-Appellant

v.

STEPHEN CARPONELLI, et al.,
Defendants-Appellees

Appeal from the Circuit Court Of Cook County, Illinois
County Department, Law Division
NO. 77L 10953
Honorable Myron Gomberg, Judge Presiding

ORDER

This cause coming on to be heard on the Motion, Notice and Affidavit of the Plaintiff-Appellant, BETTY SANDER HARVEY, pro se and moves this court for Change of Venue, or in the alternative for entry of an order disqualifying the Honorable justices Mayer Goldberg, Thomas McGloon, Calvin Campbell, Helen McGillicuddy and Daniel McNamara from reviewing this case in any event . . .

IT IS HEREBY ORDERED that plaintiff's Motion is denied.

Order Entered May 3, 1982

Thomas A. McGloon
John M. O'Connor, Jr.
(Illegible)

APPENDIX C

NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

FIRST DIVISION AUGUST 22, 1983

Nos. 82-382 and 82-383
(CONSOLIDATED)

BETTY SANDER HARVEY, also known as DAVIS,

Plaintiff-Appellant,

v.

STEPHEN P. CARPONELLI and CARPONELLI, MASSUCCI & KRUG,

Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
HONORABLE PAUL F. ELWARD, PRESIDING.

JUSTICE McGLOON delivered the opinion of the court:

Pro se plaintiff, Betty Sander Harvey, brought an action against defendants, her former attorney and his law firm, for purported professional negligence. The cause was assigned to trial and plaintiff sought and received a change of venue. It was reassigned to a second trial judge and plaintiff again requested a change of venue which was denied. A jury was ultimately impanelled after two panels of prospective jurors were dismissed during *voir dire*. Opening statements were heard and evidence was adduced. A mistrial was subsequently declared

by the circuit court judge. After a hearing, the trial court entered an order holding plaintiff in direct contempt of court. A fine of $2,109.50 was also assessed against plaintiff Finally, defendants' petition for attorney fees and costs was granted.

On appeal, plaintiff raises numerous issues that are not properly before this court. However, having reviewed the record, we address the following issues which this case presents: (1) whether the trial court erred in holding plaintiff in contempt of court; (2) whether the fine of $2,109.50 assessed against plaintiff is excessive; and (3) whether the trial court erred in awarding defendants $2,108.50 in attorney fees and costs.

We affirm in part, reverse in part and remand.

Defendants were hired to represent plaintiff during the probate proceedings and settlement of her father's estate. Plaintiff subsequently filed the instant action predicated upon the theory of professional negligence.

Plaintiff obtained her first change of venue after the cause was assigned to trial before the Honorable Lester Foreman. Thereafter, it was reassigned to the Honorable Paul Elward. Plaintiff's petition for a second change of venue was denied.

The cause proceeded to trial on August 13, 1981. Plaintiff was specifically warned against mentioning "insurance" to the jurors during *voir dire*. Despite the warning, plaintiff continued to ask improper questions. On two occasions all the jurors in the courtroom had to be excused as a result of plaintiff's questions. Defendants' motions for a mistrial were denied on both occasions. A jury was impanelled and opening statements were heard.

Plaintiff's first witness was called and examined. The trial judge found that the entire line of questioning by plaintiff as *pro se* counsel indicated a lack of awareness of the issues raised by plaintiff in her fourth amended

complaint. The entire testimony of this witness was stricken as irrelevant. Next, plaintiff called herself as a witness. After taking the stand, she was allowed to read questions to herself from her notes for one and one-half days. She asked herself at least one question to which she answered "I don't know."

On August 24, 1981, plaintiff asked the trial judge "Are we interested in facts, your Honor," in the presence of the jury. Following an in-chambers hearing, the trial judge granted defendants' third motion for a mistrial.

On January 4, 1982, the trial judge held plaintiff in contempt of court and assessed against plaintiff a fine of $2,109.50. The court also awarded defendants $2,108.50 in attorney fees and costs. The oral ruling of January 4, 1982 was incorporated into the written judgment entered January 7, 1982.

Initially, we must comment on the brief filed by plaintiff in this court. Here, as in *Biggs* . *Spader* (1952), 411 Ill. 42, 103 N.E.2d 104, the brief filed is ambiguous and arduous and does not present the issues sought to be decided in an orderly manner. Furthermore, this court has recently held that reveiwing courts are entitled to have briefs submitted that present an organized and cohesive legal argument in accordance with the Supreme Court Rules. (*In re Marriage of Souleles* (1982), 111 Ill.App.3d 865, 444 N.E.2d 721.) Strict adherence to this standard is necessary to expedite and facilitate the administration of justice. *Biggs*.

We are mindful that plaintiff has litigated the action below as well as this appeal *pro se* and is not a licenced attorney. She asserts, as she did in *Harvey* v. *Connor* (1980), 85 Ill.App.3d 1061, 407 N.E.2d 879, *cert. den.* 451 U.S. 938, 68 L.Ed.2d 326, 101 S.Ct. 2019, that she contacted over 40 attorneys and was unable to find one who would handle her case. However, this court has heard four prior appeals in which plaintiff was involved

as a *pro se* litigant. (*See, Harvey* v. *Mackay* (1982), 109 Ill.App.3d 582, 440 N.E.2d 1022, wherein the court held that plaintiff failed to state a claim against an attorney for professional negligence; *Harvey* v. *Connor*, wherein the court affirmed the dismissal of plaintiff's action against a former attorney for legal malpractice; *Bard* v. *Harvey* (1979), 74 Ill.App.3d 16, 392 N.E.2d 371, *cert. den.* 103 S.Ct. 819; *Harvey* v. *Harris Trust & Savings Bank* (1979), 73 Ill. App.3d 280, 391 N.E.2d 461, *cert. den.* 445 U.S. 929, 63 L.Ed.2d 762, 100 S.Ct. 1316.) In *Harvey* v. *Harris Trust & Savings*, we reminded plaintiff that this court will not apply a more lenient procedural standard to *pro se* litigants than is generally allowed attorneys. We regret that we must again admonish plaintiff that a *pro se* litigant must comply with the same rules of procedure required of attorneys.

We find plaintiff's brief to be flagrantly deficient in many respects and violative of the rules established by the supreme court for appellate briefs. Ill. Rev. Stat. 1981, ch. 110A, par. 341.

The introductory paragraph lists orders entered by the trial court followed by the vague statement that "[a]ppeal is taken from all such orders." No statement of the issue or issues presented for review as contemplated by subparagraph 2 of Rule 341(e) (Ill. Rev. Stat. 1981, ch. 110A, par. 341(e)(2)) is included to facilitate this court's administration of justice. Plaintiff's purported "Statement of Facts" contains matters which are neither pertinent nor relevant to any issues properly before this court. Moreover, it is replete with improper argument and rhetorical ardency in direct contravention to Rule 341 (e)(6) (Ill.Rev.Stat. 1981, ch. 110A, par. 341(e)(6)). Further, plaintiff's brief fails to comply with Rule 341(e)(7) (Ill. Rev.Stat. 1981, ch. 110A, par. 341(e)(7)) in that the section entitled "Argument" contains lengthy excerpts from the record presented in an incohesive manner.

Plaintiff's contention that "no written order was entered by the court finding her in contempt" is misleading inasmuch as a copy of the order is included in her brief.

It is well-established that it is not the duty of this court to search the record to determine the real issues involved in an action. (*Biggs.*) A reviewing court is entitled to have the issues clearly defined. *Souleles*; *In re Estate of Kunz* (1972), 7 Ill.App.3d 760, 288 N.E.2d 520.

A party's failure to state informatively the errors relied upon for reversal and to present an organized and cohesive argument in compliance with the supreme court rules has been held to justify dismissal of the appeal. (*Biggs; Ravenswood* v. *Maiorella* (1982), 104 Ill.App.3d 1072, 433 N.E.2d 1044.) However, we have chosen to entertain this appeal.

First, plaintiff contends that the trial court's denial of her second petition for a change of venue violated her constitutional rights to a tribunal free from prejudice. She further argues that all orders entered by the trial court thereafter are void. This issue is not properly before this court for the following reason. We have reviewed the five notices of appeal filed by plaintiff and found that they make no mention of the trial court's order of August 14, 1981, denying plaintiff's petition. It is firmly established that this court has jurisdiction only over those matters which are raised in the notice of appeal. (*Illinois Central Gulf R.R. Co.* v. *Sankey Bros, Inc.* (1979), 59 Ill.App.3d 805, 375 N.E.2d 961.) Therefore, the propriety of the order is not properly before us. (*Sankey.*) A reviewing court will not normally consider an issue not presented to the trial court and presented for the first time on review. (*Kravis* v. *Smith Marine, Inc.* (1975), 60 Ill.2d 141, 324 N.E.2d 417.) The constitutional issues raised by plaintiff throughout her brief were never raised in the lower court and will not be considered here.

Accordingly, we will not address the constitutional aspects of plaintiff's second contention, that the trial court's

action of holding plaintiff in contempt of court violated her due process rights. However, in order to reach a just result, we address the issues as to whether the trial court's order finding plaintiff in contempt of court is proper and whether the fine imposed is excessive.

An initial issue that must be resolved is whether the trial court's proceedings were in the nature of civil or criminal contempt. The assistant State's Attorney characterized plaintiff's conduct during *voir dire* and at trial as a "civil contempt" while the trial judge merely labeled it "direct contempt". The line of demarcation between civil and criminal contempt is often indistinct. This is so because many acts involve elements of both. "Criminal contempt" is contumacious conduct directed against the dignity of the court which tends to obstruct the court's administration of justice. "Civil contempt" consists of failing to do something which the contemnor is ordered by the court to do for the benefit of the opposing litigant. The purpose of the sanction imposed upon the contemnor also distinguishes criminal from civil contempt. The purpose of the former is primarily to punish for actions already taken while the latter intends to coerce future compliance with a court entered order. *Pabst Brewing Co.* v. *Brewery Workers Local Union No. 77* (7th Cir. 1977), 555 F.2d 146.

Desite the State's characterization of plaintiff's conduct as civil contempt, we have reached the conclusion that plaintiff's conduct was directed against the dignity of the court and is more properly characterized as direct criminal contempt.

The contempt sanction imposed was clearly punitive in nature. During a hearing on January 4, 1982, the trial judge found plaintiff in contempt for conduct which exhibited a "callous and cynical disregard of accepted norms or conduct" resulting in a substantial waste of the court's time. A fine of $2,109.50 was imposed as a penalty. Although the penalty was to be reduced by any amount paid

toward the award of fees and costs to defendants, it could not be reduced to less than $1. Here, as in *Aurora Steel Product* v. *United Steelworkers* (1981), 94 Ill.App.3d 97, 418 N.E.2d 492, the purpose of imposing a fine was to vindicate the authority of the court. Such intent is evidenced by the following statement made by the trial judge during the hearing:

> "Now before I assess the penalty against you [plaintiff] for that [contumacious] conduct, which is between the court and yourself — it doesn't involve [defense attorney] or have anything to do with expenses that he and his clients had has ***."

Thus, the fact that defendants may have benefited indirectly from the contempt proceedings is insufficient to alter the character of the contempt. *Aurora.*

Furthermore, we find ample evidence in the record below to support the trial judge's finding of plaintiff in contempt. Plaintiff's failure to follow the court's warnings caused the dismissal of two venire panels. The trial judge correctly found that plaintiff deliberately disobeyed the court's previous warnings not to question the jury about insurance. Furthermore, during direct examination in the presence of the jury plaintiff asked "Are we interested in the facts, your Honor." A mistrial was declared as a result.

It is well-settled that the trial court's determination of contempt will not be disturbed unless it is against the manifest weight of the evidence or the record discloses an abuse of discretion. (*Aurora.*) We find no such abuse of discretion in the present case.

However, the fine of $2,109.50 is excessive and must be reduced under *County of McClean* v. *Kickappoo Creek, Inc.* (1972), 51 Ill.2d 353, 282 N.E.2d 720. In *County of McClean*, the Illinois Supreme Court held that where the penalty imposed exceeds six months incarceration or a

fine in excess of $500, the record must reflect that the contemnor was afforded a jury trial or knowingly and understandingly waived the right in open court.

In the instant case, the record does not disclose that plaintiff waived her right to a jury trial. Therefore, under *County of McClean,* the court could not impose a fine in excess of $500. Furthermore, it is manifestly unfair to assess a penalty in an amount which fluctuates according to how much is paid to another party pursuant to a separate court order. The only amount not subject to reduction is $1. Therefore, plaintiff's fine must be reduced to $1.

The only remaining issue properly before this court is whether the trial court erred in awarding defendants $1,410.50 in attorney fees and $698 in costs. Defendants argue that the award is proper since the expenses were incurred as a result of plaintiff's wrongful conduct, not as a party plaintiff, but as *"pro se* counsel" whose improper and impertinent behavior magnified the costs of the defendants' defense. We agree.

In Illinois, one who commits a wrongful act is liable for all the ordinary and natural consequences of his act. (*Bimba Mfg. Co.* v. *Starz Cylinder Co.* 1969), 119 Ill. App.2d 251, 256 N.E.2d 357; *Sorenson* v. *Fio Rito* (1980), 90 Ill.App.3d 368, 413 N.E.2d 47.) Moreover, when one's wrongful conduct forces another into litigation with third parties, he is liable for all of the costs of that litigation including attorney fees. *Sorenson, Ritter* v. *Ritter* (1943), 381 Ill. 549, 46 N.E.2d 41.

In the instant case, defendants filed a petition to recover fees and costs from the person whose improper conduct caused defendants to incur fees above those normally incurred. In awarding defendants 41.18% of the amount requested, the court found that plaintiff's conduct, as *pro se* counsel, was "deliberate and premeditated" and caused defendants costs and attorney fees beyond

those to be expected in the ordinary course of litigation. We find that the award of attorney fees and costs merely compensated defendants for ordinary losses resulting from plaintiff's conduct. (*Sorenson.*) Therefore, the trial court's award of said fees and costs was proper.

For the foregoing reasons, we affirm in part and reverse in part the orders of the circuit court of Cook County, and remand the cause for the purpose of reducing the fine assessed against plaintiff to $1.

ORDERS AFFIRMED IN PART, REVERSED IN PART; CAUSE REMANDED.

BUCKLEY, P.J. and CAMPBELL, J., Concur.

APPENDIX D

ILLINOIS SUPREME COURT
Juleann Hornyak, Clerk
Supreme Court Building
Springfield, Ill. 62706
(217) 782-2035

December 6, 1983

Ms. Betty Sander Harvey
10 Bradford Lane
Oak Brook, IL 60521

No. 59102 — Betty Sander Harvey a/k/a Davis, petitioner, vs. Stephen P. Carponelli, et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause. Simon, J., took no part.

The Mandate in this cause will be issued to the appropriate Appellate Court on December 28, 1983.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

APPENDIX E

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

HARVEY,

Plaintiff

v.

CARPONELLI,

Defendants

NO. 77 L 10953

ORDER

4. The Court *sua sponte* hereby orders that all parties are barred from securing the names and/or addresses of any jurors called in this case or questioning same.

October 15, 1981

ENTER:
PAUL F. ELWARD
Judge

APPENDIX F

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

BETTY SANDER HARVEY,

Plaintiff

v.

STEPHEN CARPONELLI, et al.,

Defendants

NO. 77 L 10953

ORDER

This cause coming on to be heard on motion of the defendant, due notice having been given, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT judgment be and the same hereby is entered in favor of Defendants STEPHEN P. CARPONELLI and CARPONELLI, MASSUCCI & KRUG and against the Plaintiff, BETTY SANDER HARVEY a/k/a DAVIS, in the amount of TWO THOUSAND ONE HUNDRED EIGHT AND 50/100 ($2,108.50) DOLLARS of which SIX HUNDRED NINETY EIGHT AND NO/100 ($698.00) DOLLARS is an award of costs and ONE THOUSAND FOUR HUNDRED TEN AND 50/100 ($1,410.50) DOLLARS is an award of attorneys' fees, all in accordance with the oral ruling and judgment read into the record on January 4, 1982, which oral ruling and judgment has been transcribed and the excerpt of said proceedings of January 4, 1982 is attached hereto, made a part hereof and is incorporated herein by reference.

January 7, 1982

ENTER:
JUDGE PAUL F. ELWARD
Judge

APPENDIX G

(Seal)

(Letterhead of)
STATE OF ILLINOIS

OFFICE OF
CLERK OF THE SUPREME COURT
Springfield
62706

Juleann Hornyak
Clerk

Telephone
Area Code 217
782-2035

October 26, 1983

Ms. Betty Sander Harvey
10 Bradford Lane
Oak Brook, IL 60521

THE COURT HAS THIS DAY ENTERED THE FOLLOWING ORDER IN THE CASE OF:

No. 59102 — Betty Sander Harvey, etc., petitioner vs. Stephen P. Carponelli, et al., respondents.

The motion by petitioner, pro se, for stay of mandate of the Appellate Court, First District, pending disposition of petition for leave to appeal is *allowed.*

JH:th
cc: Appellate Court, First District
Pretzel & Stouffer

JULEANN HORNYAK, CLERK

APPENDIX H

TRIAL TRANSCRIPT

Report of Proceedings, Aug. 24, 1981, p. 64

MS. HARVEY:

Q. Mrs. Harvey, do you have any other documents which would reflect in any way, relate in any way, to the title to the property at 1053-55 West Lake Street and which are relevant to the representation of the ownership of such property as reflected in the estate inventory and the family agreement?

A. Yes, I do.

MR. CHEMERS: I object to the form of the question, your Honor. It's many questions in one —

THE COURT: Yes.

MR. CHEMERS: (Continuing) — and I think the question is incompetent.

THE COURT: Please break it up.

Objection sustained.

Let's try simple questions, if you will, Mrs. Harvey.

MS. HARVEY: Are we interested in facts, your Honor, or — — —

THE COURT: Please come back to chambers.

MR. CHEMERS: I'd ask for a side bar, Judge.

APPENDIX I

TRIAL TRANSCRIPT

Report of Proceedings, Aug. 24, 1981, p. 69

compelled to do it. I have to make objections to these questions. I have to make objections to the purported documents which Plaintiff somehow thinks constitute evidence. I must represent my clients.

The comment the Plaintiff made to the Court I construe as so inflammatory and so prejudicial and when the jury heard that comment, coupled with the objections I made, they can only think but one thing: that the defense lawyer is trying to shut this woman up; he doesn't want to let her talk to the point where she had to blurt out, "Judge, aren't we interested in the truth and the facts."

MS. HARVEY: I did not.

MR. CHEMERS: I ask for a mistrial.

MS. HARVEY: You're misquoting me, Mr. Chemers.

THE COURT: Your comment was, "Are we interested in the facts, your Honor," isn't it?

MS. HARVEY: Yes, your Honor. But no one let me finish.

THE COURT: That was a question. That was a question.

APPENDIX J

TRIAL TRANSCRIPT

Report of Proceeding, Hearing Jan. 4, 1982, p.37

THE COURT: Let the record show that was your second request for change of venue, the first one having been granted when you first appeared before Judge Lester Forman.

MS. HARVEY: Yes, your Honor; that is correct. You are absolutely correct.

THE COURT: As I pointed out to you, the statute does not allow more than one.

Go ahead.

MS. HARVEY: My question was, is or is not a person entitled to a fair and impartial hearing before an impartial tribunal?; that is the right to due process; the United States Constitution provides for this.

THE COURT: You got a fair trial, Mrs. Harvey. You are the one that disrupted the trial.

I was hoping we would go through after spending so many hours and days, and go through all the way and find what the jury thought about the case.

As my decision indicates this morning in the other matter of the fees and costs, you marked fifty six exhibits —

MS. HARVEY: Yes, your Honor.

THE COURT: — for identification, not one of

APPENDIX K

PETITIONER'S REPLY BRIEF p.1

CONTEMPT CITATION ARGUMENT

I.

THERE IS NO BASIS IN LAW OR FACT FOR THE TRIAL COURTS ORDER ASSESSING $2,109.50 FINE AGAINST PLAINTIFF FOR CONTEMPT OF COURT OR FOR THE HOLDING OF HER IN CONTEMPT.

Try as he may the State's Attorney has not set forth any basis in law or fact for the Court to assess $2,109.50 fine against plaintiff for alleged contempt of court for saying the word "insurance" during pretrial. And no matter how he distorts the facts, *there is neither a written order finding her in contempt for saying the word "insurance", nor written* order prohibiting her from saying such word, as verified by the computer printout of this case (Record on appeal (C994) Exhibit A).

Further there are on record no transcripts of Reports of Proceedings which reflect oral entry of such orders in *People* v. *Wilcox*, 5 Ill. 2d 222

> The Court held: the existence of an order of court and proof of willful disobedience of such order are essential to a contempt of court for contemptuous disobedience of order . . . and that the mandate must be clear before disobedience of it can subject a person to punishment.

In Wilcox attorney's wife who was ordered by court not to file notices and motions filed them with clerk and judge held her in contempt. On appeal the court reversed stating:

> Where there is no showing in the record that an order not to file the papers was clearly given or

understandingly received there can be no contempt for disobeying.

In the case at bar there is no order not to use the word "insurance". Wherefore such non-existent order could not be clearly given or understandingly received, it follows there can be no contempt for disobeying it. And since there was no written order forbidding plaintiff to say the word "insurance" there cannot be and is not one iota of proof of willful disobedience as the law requires.

APPENDIX L

TRIAL TRANSCRIPT

Report of Proceeding, Aug. 24, 1981 p.9

will it be off the record.

MR. CHEMERS: Well, I don't know if you wanted this on the record. I'll state what it is.

I understand the Court talked to the jurors about their reactions to the case.

THE COURT: No, I didn't talk to them about their reactions to the case. I discussed with them the reasons why there was a mistrial.

MR. CHEMERS: Oh, I see.

THE COURT: And that was all.

No, I did not ask for, did not get, and cannot report any soundings. The jurors indicated that they had no opinion on the case since they had not even heard all the plaintiff's case.

MR. CHEMERS: Oh.

THE COURT: They have, I would say, in my judgment, formed no opinion about the case.

MR. CHEMERS: That's what I was curious about.

THE COURT: Yes. No.

MR. CHEMERS: I'll draw an order.

THE COURT: All right. Can we excuse the reporter or is there anything else?

MR. CHEMERS: She can be excused, Judge.

THE COURT: All right.

APPENDIX M

TRIAL TRANSCRIPT

Report of Proceeding, Aug 24, 1981 p.70

MS. HARVEY: I was going to say the facts which establish —

THE COURT: That was a question.

MS. HARVEY: It was a partial question. This has happened to me before. I'm interrupted before I can complete my statement.

THE COURT: Nobody interrupted you then. Out of the clear blue sky, not in response to any question and not having anything to do with any question or answer, you suddenly say, "Are we not interested in the facts?"

MS. HARVEY: Are we interested in facts, your Honor, in facts, your Honor, to establish —

THE COURT: Now, what impression does that leave with the jury?

MS. HARVEY: Excuse me. Had I finished it, I was going to say the facts which establish the ownership of this property which was inventoried in the estate.

THE COURT: Now, Mrs. Harvey, you're too cute by far.

MS. HARVEY: Pardon me?

THE COURT: I say you are too cute by far.

END OF DOCKET